

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**CRAIG T. WILSON DBA WILSON  
TRUCKING SERVICE,**

**Respondent.**

**Docket No. FMCSA-2007-29311<sup>1</sup>  
(Eastern Service Center)**

**FINAL ORDER**

**1. Background**

On July 5, 2007, the Delaware Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) against Craig T. Wilson dba Wilson Trucking Service (Respondent) following a compliance review of Respondent conducted on May 25, 2007.<sup>2</sup> The NOC charged Respondent with one violation of 49 CFR 382.305(b)(2), failing to conduct random controlled substances testing at the prescribed annual rate, with a proposed civil penalty of \$4,510.

Respondent replied to the NOC on July 30, 2007.<sup>3</sup> He stated that he was “without sufficient knowledge or information to either admit or deny the allegations” in the NOC and denied them. He further asserted that in 2006 he hired Health Enhancement Center to conduct drug testing for him and “in reliance upon Health Enhancement Center,

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<sup>1</sup> The prior case number was DE-2007-0045-US1264.

<sup>2</sup> Exhibit A to Field Administrator’s Objection to Respondent’s Request for Hearing and Motion to Enter Default Final Order for Failure to File Adequate Reply in Accordance with 49 CFR 386.14 (hereafter Objection and Motion for Default).

<sup>3</sup> Exhibit B to Objection and Motion for Default.

Wilson Trucking Center (sic) was in compliance with 49 CFR § 382.305(b)(2).”

Respondent requested an informal hearing under 49 CFR 386.14(b).

On September 21, 2007, the Field Administrator for FMCSA’s Eastern Service Center (Claimant) objected to Respondent’s request for an informal hearing and moved for entry of an order of default declaring the NOC, including the civil penalty, as the final agency order in the proceeding. Claimant argued that Respondent failed to present any valid grounds for contesting the claim or raise any affirmative defenses. Consequently, according to Claimant, Respondent’s reply was nothing more than a general denial, was deficient under the Agency’s Rules of Practice, and constituted a failure to reply to the NOC. Respondent did not respond to the Motion.

## ***2. Decision***

Section 386.14(b) of the Agency’s Rules of Practice requires a respondent, in replying to an NOC, to either pay the full amount of the claim, contest the claim by requesting administrative adjudication or seek binding arbitration regarding the proposed civil penalty. Although Respondent denied the violation alleged in the NOC, this denial was based on the flawed argument that he did not violate § 382.305(b)(2) because he fully complied with the directions of his drug testing contractor, Health Enhancement Center. He did not contest the NOC’s allegation that random controlled substances testing was not done at the proper rate.<sup>4</sup>

Section 382.305(j)(2) provides: “As an employer, you may use a service agent...to perform random selections for you....However you must ensure that the

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<sup>4</sup> The NOC alleged that Respondent was required to conduct three random controlled substance tests in 2006, based on an average of 6 driver positions, whereas Respondent’s files indicated that Respondent conducted only one random controlled substance test during that year.

service agent you use is testing at the appropriate percentage established by your industry and that only covered employees are in the random testing pool.” Therefore, Respondent could not properly shift responsibility for compliance with § 385.305(b)(2) to his service agent, Health Enhancement Center; he was legally responsible for regulatory compliance.<sup>5</sup> Respondent, accordingly, did not present a meritorious defense and, by failing to contest the underlying facts, admitted violating § 382.305(b)(2). Admissions and defaults are not mutually exclusive. Once a respondent has admitted violations for which he is charged, he should choose to either pay the full amount of the civil penalty or seek binding arbitration on the amount of the civil penalty and/or the length of time in which to pay it.<sup>6</sup> Because Respondent chose neither option in this instance, however, he defaulted.

Accordingly, Claimant’s Motion for Default will be granted. Respondent’s default makes the NOC, including the civil penalty proposed in the NOC, the Final Agency Order in this proceeding.

THEREFORE, *It Is Hereby Ordered That*, Respondent pay to the Field Administrator for the Eastern Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$4,510 for one violation of the Federal Motor Carrier Safety Regulations. Payment may be made electronically through FMCSA’s registration site at <http://safer.fmcsa.dot.gov> by selecting “Online Fine Payment” under the “FMCSA Services” category. In the alternative, payment by cashier’s check, certified

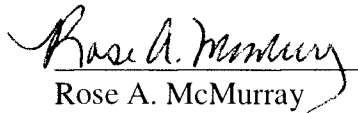
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<sup>5</sup> See *In the Matter of Fikes Dairy, Inc.*, Docket No. FMCSA-2001-9089, Final Order Under 49 C.F.R. § 385.15, April 30, 2001, at 4.

<sup>6</sup> See *In the Matter of Archie Palmer*, Docket No. FMCSA-2007-26787, Final Order, May 11, 2007. Respondent did not challenge the amount of the civil penalty.

check, or money order may be remitted to the Claimant at the address shown in the

Certificate of Service.<sup>7</sup>



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

6.29.10  
Date

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<sup>7</sup> Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

**CERTIFICATE OF SERVICE**

This is to certify that on this 1 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Craig T. Wilson, Owner  
Wilson Trucking Service  
1320 Duhamel Corner Road  
Sudlersville, MD, 21668

One Copy  
U.S. Mail

John C. Bell, Esq.  
Trial Attorney  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Drive, Suite N  
Glen Burnie, MD 21061

One Copy  
U.S. Mail

Loretta Bitner, Acting Field Administrator  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Drive, Suite N  
Glen Burnie, MD 21061

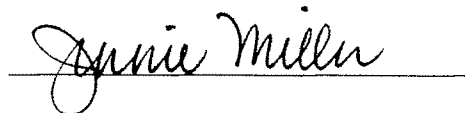
One Copy  
U.S. Mail

Veron Kirkendoll  
Delaware Division Administrator  
Federal Motor Carrier Safety Administration  
300 South New Street, Suite 1105  
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One Copy  
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U.S. Department of Transportation  
1200 New Jersey Avenue SE  
Room W12-140  
Washington, DC 20590

Original  
Personal Delivery

A handwritten signature in cursive script, reading "Jennie Miller", is written over a horizontal line.